Findings of Fact

of the

Bureau of Cannabis Control

as a

Responsible Agency under the
California Environmental Quality Act
(Pub. Resources Code § 21000 et seq.)

for the

California Department of Food and Agriculture
CalCannabis Cultivation Licensing Program

as analyzed in its

Final Program EIR

November 2017

INTRODUCTION

The Bureau of Cannabis Control (Bureau) has prepared these findings to comply with the requirements of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) and the Guidelines for the Implementation of CEQA (Cal. Code Regs., tit. 14, § 15000 et seq.; hereafter Guidelines.). These findings rely upon the Notice of Preparation (NOP) and Program Environmental Impact Report (PEIR) prepared by the California Department of Food and Agriculture (CDFA) for its CalCannabis Cultivation Licensing Program, and other relevant materials in the Bureau's administrative record, including the Bureau's Initial Study/Negative Declaration (IS/ND) for its proposed cannabis business regulations which rely, in part, on the analysis and conclusions of CDFA's PEIR. (Guidelines § 15096(f).)

SCOPE, PURPOSE, AND EFFECT OF FINDINGS

Findings are required by each "public agency" that approves a "project for which an environmental impact report has been certified which identifies one or more significant effects on the environment[.]" (Pub. Resources Code, §21081(a); Guidelines § 15091(a); see also Pub. Resources Code, § 21068 ("significant effect on the environment" defined); Guidelines § 15382 (same).)

Accordingly, these findings are intended to comply with CEQA's mandate that no public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant effects thereof unless the agency makes one or more of the following findings:

(1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment;

(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency;

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the EIR.

(Pub. Resources Code § 21081(a); Guidelines § 15091(a).)

These findings are also intended to comply with the requirement that each finding by the Bureau be supported by substantial evidence in the administrative record of proceedings, as well as accompanied by a brief explanation of the rationale for each finding. (*Id.*, § 15091 (a), (b).) To that end, these findings provide the written, specific reasons supporting the Bureau's decision under CEQA to implement the Microbusiness Cultivation Regulations described in its IS/ND (SCH #2017092017).

DEFINITIONS AND ACRONYMS

Unless otherwise stated, these findings use the same definitions and acronyms set forth in CDFA's PEIR or the Bureau's IS/ND.

PROGRAM DESCRIPTION

The Bureau is acting as a responsible agency on the PEIR prepared by CDFA for its CalCannabis Cultivation Licensing Program (CDFA's Proposed Program). The Bureau is responsible for licensing commercial cannabis microbusinesses, one element of which may include cannabis cultivation. Cultivation activities conducted as part of a microbusiness would need to comply with CDFA's regulations governing cultivation.

CDFA prepared a PEIR that considers in great detail the potential impacts of cannabis cultivation pursuant to the agency's anticipated regulations. The overall purpose of CDFA's Proposed Program is to ensure that commercial cannabis cultivation is performed in a manner that protects the environment, cannabis cultivation workers, and the general public from the individual and cumulative effects of these operations, and complies with applicable laws. An additional purpose of the program is to establish a track-and-trace system to ensure that the movement of commercial cannabis and cannabis products is tracked throughout the distribution chain.

CDFA's Proposed Program involves the adoption of regulations to establish and implement a licensing program for medicinal and adult-use cannabis cultivation and a track-and-trace system to monitor the movement of cannabis and cannabis products through the supply chain, in compliance with the requirements of the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). CDFA's Proposed Program is implemented in partnership with a number of different entities, including the other California cannabis business licensing agencies (the Bureau and the Manufactured Cannabis Safety Branch, a division of the California Department of Public Health [CDPH]), other state agencies (the Department of Fish and Wildlife and the State Water Resources Control Board), and local jurisdictions.

Rather than repeat CDFA's analysis, the Bureau's IS/ND incorporated the analysis and included the CDFA Draft PEIR as an appendix. In the Bureau's IS/ND, the potential impacts from cultivation as a part of microbusiness licensing are summarized within each topical resource section in a discussion that was separate from the impact discussions of other aspects of the microbusiness license and other license types. In making its impact conclusions in the IS/ND, the Bureau considered the impacts of its regulations as a whole (including microbusiness cultivation), other aspects of the microbusiness, and other license types. This approach conforms with Guidelines § 15096, subdivision (a), which requires a responsible agency to consider the EIR prepared by the lead agency and reach its own conclusions on whether and how to approve the project involved.

The Bureau recognizes that CDFA has updated the text of its PEIR in response to public comments received on the Draft PEIR, as well as changes initiated by CDFA in response to the passage of MAUCRSA. CEQA case law emphasizes that "'[t]he CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during investigation, evoking revision of the original proposal.'" (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 736-737; see also *River Valley Preservation Project v. Metropolitan Transit Development Bd.* (1995) 37 Cal.App.4th 154, 168, fn. 11.) "'CEQA compels an interactive process of assessment of environmental impacts and responsive project modification which must be genuine. It must be open to the public, premised upon a full and meaningful disclosure of the scope, purposes, and effect of a consistently described project, with flexibility to respond to unforeseen insights that emerge from the process.' [Citation.] In short, a project must be open for public discussion and subject to agency modification during the CEQA process." (*Concerned Citizens of Costa Mesa, Inc. v. 33rd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929,

936.) Here, the changes made to the PEIR in the Final PEIR are exactly the kind of revisions that the case law recognizes as legitimate and proper. The Bureau has reviewed these changes and determined that they do not affect the conclusions of CDFA's PEIR or the Bureau's IS/ND.

For the purposes of these findings, the project that is being considered for approval by the Bureau with respect to the CDFA PEIR is the Bureau's adoption of regulations related to the issuance of microbusiness licenses, which allow cannabis cultivation. The Bureau's project is referenced in this document as the Microbusiness Cultivation Regulations.

The CDFA PEIR identified two potentially significant environmental impacts that would result with the implementation of CDFA's Proposed Program, absent mitigation. As documented in its IS/ND, the Bureau determined that the impacts identified in the PEIR would be less than significant in the context of the Bureau's Microbusiness Cultivation Regulations. However, as a responsible agency for CDFA's PEIR, the Bureau is required to make written findings with respect to each significant effect identified in the PEIR, accompanied by a brief explanation of the rationale for each finding. (Guidelines, §§ 15091(a), 15096(h).) Therefore, in addition to adopting the Negative Declaration, the Bureau is adopting findings with regard to the CDFA PEIR.

ADMINISTRATIVE RECORD OF PROCEEDINGS

For purposes of these findings, the administrative record of proceedings for the Bureau's Microbusiness Cultivation Regulations consists, at a minimum, of the following documents:

- The Notice of Determination and all other public notices issued by CDFA or the Bureau in connection with the Microbusiness Cultivation Regulations;
- All resolutions adopted by the Chief of the Bureau of Cannabis Control approving the Microbusiness Cultivation Regulations or required by law (including program approval and IS/ND certification);
- The IS/ND, comments on the IS/ND, and any responses to those comments;
- The remainder of the IS/ND, including all appendices and other materials (references);
- The CDFA Draft PEIR and all documents relied upon or incorporated by reference;
- All comments submitted by agencies or members of the public during the 45-day comment period on the CDFA Draft PEIR;
- The Final PEIR for CDFA's Proposed Program, including any staff reports, comments received on the Draft PEIR, CDFA's responses to those comments, technical appendices, and all documents relied upon or incorporated by reference;
- All findings adopted by the Bureau in connection with the Microbusiness Cultivation Regulations, and all documents cited or referred to therein;
- All reports, studies, memoranda, maps, staff reports, or other planning documents relating to the Microbusiness Cultivation Regulations prepared by the Bureau or CDFA, or consultants to the Bureau or CDFA with respect to the Bureau's compliance with the requirements of CEQA and with respect to the Bureau's action on the Microbusiness Cultivation Regulations;
- All documents submitted to the Bureau by other public agencies or members of the public in connection with the Microbusiness Cultivation Regulations, up through approval;

- Any minutes and/or verbatim transcripts of all information sessions, public meetings, and public hearings held by the Bureau in connection with the Microbusiness Cultivation Regulations;
- Any documentary or other evidence submitted to the Bureau at such information sessions, public meetings, and public hearings;
- All resolutions adopted by the Bureau regarding the Microbusiness Cultivation Regulations, and all staff reports, analyses, and summaries related to the adoption of those resolutions;
- Matters of common knowledge to the Bureau, including but not limited to federal and state laws and regulations;
- Any documents expressly cited to in these findings, in addition to those cited above; and
- Any other materials required for the record of proceedings by Pub. Resources Code § 21167.6, subdivision (e).

Pursuant to Guidelines § 15091, subdivision (e), the documents and other materials that constitute the administrative record of proceedings upon which the Chief has based her decision are located and may be obtained from the Bureau of Cannabis Control, located at 1625 North Market Boulevard, Suite S-202, Sacramento, CA 95834. All related inquiries should be directed to the Bureau at (916) 574-7595.

The Chief has relied on all the documents listed above in exercising her independent judgment and reaching her decision with respect to the Proposed Program. Without exception, any documents set forth above not found in the Project files fall into one of two categories. Many of them reflect prior planning or legislative decisions of which the Chief was aware in approving the Microbusiness Cultivation Regulations. (See *City of Santa Cruz v. Local Agency Formation Commission* (1978) 76 Cal.App.3d 381, 391-391; *Dominey v. Department of Personnel Administration* (1988) 205 Cal.App.3d 729, 738, fn. 6.) Other documents influenced the expert advice provided to Bureau staff or consultants, who then provided advice to the Chief as the final decisionmaker. For that reason, such documents form part of the underlying factual basis for the Chief's decisions relating to approval of the Proposed Program. (See Pub. Resources Code, § 21167.6 (e)(10); *Browning-Ferris Industries v. City Council of City of San Jose* (1986) 181 Cal.App.3d 852, 866; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 153, 155.)

FINDINGS REQUIRED UNDER CEQA

Pub. Resources Code § 21002 provides that "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects[.]" The same statute provides that the procedures required by CEQA "are intended to assist public agencies in systematically identifying both the significant effects of projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects." Section 21002 goes on to provide that "in the event [that] specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof."

The mandate and principles announced in Pub. Resources Code § 21002 are implemented, in part, through the requirement that agencies must adopt findings before approving projects for which EIRs are required. For each significant environmental effect identified in an EIR for a project, the

approving agency must issue a written finding reaching one or more of three permissible conclusions. The first such finding is that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR (FEIR). The second permissible finding is that such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding, and such changes have been adopted by such other agency or can and should be adopted by such other agency. The third potential conclusion is that specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the FEIR. (Guidelines, § 15091.) Pub. Resources Code § 21061.1 defines "feasible" to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, legal, and technological factors." Guidelines § 15364 adds another factor: "legal" considerations. (See also *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 565 (*Goleta II*).)

The concept of "feasibility" also encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project. (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417 (*City of Del Mar*); *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1506-1509 [court upholds CEQA findings rejecting alternatives in reliance on applicant's project objectives]; see also *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1001 (*CNPS*) ["an alternative 'may be found infeasible on the ground it is inconsistent with the project objectives as long as the finding is supported by substantial evidence in the record'"] (quoting Kostka & Zischke, Practice Under the Cal. Environmental Quality Act [Cont.Ed.Bar 2d ed. 2009] (Kostka), § 17.39, p. 825); *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1165, 1166 ["[i]n the CALFED program, feasibility is strongly linked to achievement of each of the primary project objectives"; "a lead agency may structure its EIR alternative analysis around a reasonable definition of underlying purpose and need not study alternatives that cannot achieve that basic goal"].) Moreover, "'feasibility' under CEQA encompasses 'desirability' to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, legal, and technological factors." (*City of Del Mar, supra,* 133 Cal.App.3d at p. 417; see also *CNPS, supra,* 177 Cal.App.4th at p. 1001 ["an alternative that 'is impractical or undesirable from a policy standpoint' may be rejected as infeasible"] [quoting Kostka, supra, § 17.29, p. 824]; *San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th 1, 17.)

For purposes of these findings, the term "avoid" refers to the effectiveness of one or more mitigation measures to reduce an otherwise significant effect to a less than significant level. Although Guidelines section 15091 requires only that approving agencies specify that a particular significant effect is "avoid[ed] or substantially lessen[ed]," these findings, for purposes of clarity, in each case will specify whether the effect in question has been "avoided" (i.e., reduced to a less than significant level).

CEQA requires that the mitigation measures or alternatives be adopted, where feasible, to substantially lessen or avoid significant environmental impacts that would otherwise occur. Project modification or alternatives are not required, however, where such changes are infeasible or where the responsibility for modifying the project lies with some other agency. (Guidelines, § 15091 (a), (b).) The Bureau's IS/ND, which incorporated the CDFA's PEIR by reference, concluded that the

Microbusiness Cultivation Regulations would not require mitigation measures or alternatives to be adopted.

With respect to a project for which significant impacts are not avoided or substantially lessened, a public agency, after adopting proper findings, may nevertheless approve the project if the agency first adopts a statement of overriding considerations setting forth the specific reasons why the agency found that the project's "benefits" rendered "acceptable" its "unavoidable adverse environmental effects." (Guidelines, §§ 15093, 15043(b); see also Pub. Resources Code, § 21081.) The California Supreme Court has stated, "[t]he wisdom of approving . . . any development project, a delicate task which requires a balancing of interests, is necessarily left to the sound discretion of the local officials and their constituents who are responsible for such decisions. The law as we interpret and apply it simply requires that those decisions be informed, and therefore balanced." (*Goleta II, supra,* 52 Cal.3d at p. 576.) The Bureau's IS/ND, which incorporated CDFA's PEIR by reference, concluded the Microbusiness Cultivation Regulations would not create any significant and unavoidable impacts; thus, no Statement of Overriding Considerations is required.

LEGAL EFFECT OF FINDINGS

These findings constitute the Bureau's best efforts to set forth the evidentiary and policy basis for its decision to approve the Microbusiness Cultivation Regulations in a manner consistent with the requirements of CEQA. These findings are not merely informational, but constitute a binding set of obligations that come into effect when the Chief adopts a resolution approving the Microbusiness Cultivation Regulations.

FINDINGS

The CDFA PEIR determined that implementation of CDFA's Proposed Program would result in two potentially significant environmental impacts. However, as documented in the IS/ND, the Bureau determined that the impacts identified in the PEIR would be less than significant in the context of the Bureau's Microbusiness Cultivation Regulations. These impacts and the Bureau's findings are discussed below.

Cultural Resources, Impact CR-1:

Cause substantial adverse impacts on historical resources, archaeological resources, and human remains.

Finding:

Changes or alterations have been required in, or incorporated into, CDFA's Proposed Program which avoid or substantially lessen the significant effects on the environment. (Pub. Resources Code, § 21081(a)(1); Guidelines, § 15091(a)(1).) No such changes or alterations are required for the Bureau's Microbusiness Cultivation Regulations, as the effects related to these regulations were found to be less than significant. (Guidelines § 15126.4(a)(3) [no mitigation measures are required for impacts that are considered less than significant].)

Explanation:

Cultivation activities themselves would generally have limited potential for adverse impacts on cultural resources. However, CDFA's PEIR found that cultivation activities that involve excavation within soil that has not been disturbed previously may encounter buried historic or archaeological resources or human remains. (Draft PEIR, pp. 4.5-9 to 4.5-10.) CDFA found that these impacts

would be unlikely, but recommended the implementation of a mitigation measure to ensure that this impact is less than significant and cultural resources would not be significantly affected by the CDFA program activities. (Draft PEIR, pp. 4.5-10 to 4.5-11.)

The Bureau's IS/ND found that in the context of microbusiness cultivation, this impact would be less than significant for the following reasons: (a) the small size of cultivation area allowed for microbusiness activities and inherently limited extent of potential ground disturbance; (b) many microbusiness licenses would use indoor or mixed-light cultivation techniques which do not involve ground disturbance; (c) many small outdoor cultivation operations use aboveground pots and containers, limiting potential ground disturbance; (d) most cultivators would be unlikely to use heavy farm equipment such as plows or tractors that could result in substantial ground disturbance on a 10,000-square-foot site; and (e) local, State, and federal regulatory requirements, including but not limited to those related to protection of archeological resources and handling of human remains. (IS/ND, pp. 4.0-8 to 4.0-9.)

In conclusion, the IS/ND found that the Microbusiness Cultivation Regulations would not: cause a substantial adverse change in the significance of a historical or archaeological resource; directly or indirectly destroy a unique paleontological resource or site or unique geologic feature; or disturb any human remains. (IS/ND, p. 4.0-9.) Therefore, the impacts of the Proposed Program on cultural and paleontological resources would be less than significant. (*Ibid.*)

Tribal Cultural Resources, Impact TCR-1:

Cause a substantial adverse impact on tribal cultural resources.

Finding:

Changes or alterations have been required in, or incorporated into, CDFA's Proposed Program which avoid or substantially lessen the significant effects on the environment. (Pub. Resources Code § 21081(a)(1); Guidelines § 15091(a)(1).) No such changes or alterations are necessary for the Bureau's Microbusiness Cultivation Regulations, as the effects related to these regulations were found to be less than significant. (Guidelines § 15126.4(a)(3) [no mitigation measures are required for impacts that are considered less than significant].)

Explanation:

The CDFA PEIR found that with respect to cannabis cultivation, indirect impacts on some tribal cultural resources (TCRs) (e.g., sacred places), including resources that may have been previously unrecorded, in proximity to the premises could include disturbance from nighttime lighting or noise. (Draft PEIR, pp. 4.13-7 to 4.13-8.) TCRs may be evidenced by the presence of human-made artifacts or alterations to the landscape, or they may be places in the natural environment, including the landscape itself; the presence of human remains may also indicate the presence of a TCR. (Draft PEIR, p. 4.13-8.) In general, local governments would be responsible for conducting consultations with Native American tribes and evaluating impacts on (and, as applicable, developing mitigation for) TCRs through their local approval process, either for a site development process or for approval of a cannabis cultivation operation. (*Ibid.*) However, because not all local governments will have an approval process for cannabis cultivation, CDFA indicated in its PEIR that it would review individual cannabis cultivation license applications to determine whether tribes have already been consulted and impacts addressed by the local agency. (*Ibid.*) If not, CDFA would implement a mitigation measure to ensure compliance with State laws protecting TCRs. (*Ibid.*)

The Bureau's IS/ND found that, as with cultural and paleontological resources, the Proposed Program would not result in construction activities and would have very limited potential for land disturbance, and therefore would not have the potential for a substantial adverse effect on TCRs. (IS/ND, p. 4.0-11.) Furthermore, the Bureau has conducted outreach to Native American tribes throughout California as part of this CEQA process and in compliance with Assembly Bill 52. (*Ibid.*) Through the consultation activities conducted to date, the Bureau has not received any information that suggests that impacts on TCRs are a substantial concern. (*Ibid.*) The Proposed Program would not result in an adverse change in the significance of a tribal cultural resource. In conclusion, the Bureau determined that the Proposed Program would have a less-than-significant impact on TCRs. (*Ibid.*)

ALTERNATIVES

CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to substantially lessen or avoid significant environmental impacts that would otherwise occur. Project modification or alternatives are not required, however, where significant environmental impacts will not occur.

As is evident from the text of CDFA's PEIR and the Bureau's IS/ND, all significant effects of the Project have been avoided, that is, were either determined to be less than significant, or rendered less than significant by the adoption of feasible mitigation measures. There are no impacts that were determined to be significant and unavoidable.

Under CEQA, project alternatives are developed in order to give agency decisionmakers options for reducing or eliminating the significant environmental effects of proposed projects, while still meeting most if not all of the basic project objectives. "Alternatives and mitigation measures have the same function—diminishing or avoiding adverse environmental effects." (*Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, 403.) As described above, with respect to the Microbusiness Cultivation Regulations, all impacts were determined to remain at less than significant levels. Under CEQA then, the Bureau has no obligation even to consider the feasibility of the alternatives set forth in the EIR. (*Laurel Hills Homeowners Association v. City Council of City of Los Angeles* (1978) 83 Cal.App.3d 515, 521.) Even so, however, the Bureau, in the interest of transparency, sets forth below its reasons for concluding that all such alternatives are infeasible within the meaning of CEQA.

The CDFA PEIR examines four alternatives to its Proposed Program. These alternatives were determined to be potentially feasible and would generally meet the Program objectives. These alternatives are described in detail in Chapter 5 of the CDFA PEIR Volume 1. Chapter 5 of the PEIR Volume 1 also describes that the Proposed Program is considered to best meet the Program objectives and is environmentally superior compared to any of the alternatives. Accordingly, none of the alternatives evaluated in the PEIR were selected as preferred over CDFA's Proposed Program, and the Bureau and Chief agree with those determinations. A brief description of each alternative is provided below.

No Program Alternative

Under the No Program Alternative, CDFA would not implement the CalCannabis Cultivation Licensing program; create, issue, renew, discipline, suspend, or revoke licenses for the cultivation of cannabis; or collect fees in connection with activities regulated by the Proposed Program. (PEIR, p. 5-4.) CDFA would not implement the proposed track-and-trace system for the purposes of

tracking medicinal cannabis, nor would the agency implement the proposed reporting system, fees, and documentation requirement imposed by such a program. (*Ibid.*) For the purposes of discussion, it is assumed that existing cannabis cultivation operations (both permitted and unpermitted) would continue to operate under the existing regulatory climate. (*Ibid.*)

Finding:

Specific economic, legal, social, technological, or other considerations make infeasible the No Program Alternative identified in the EIR. (Pub. Resources Code, § 21081(a)(3); Guidelines, § 15091(a)(3).)

Explanation:

The No Program Alternative would fail to meet MAUCRSA obligations, which require CDFA to adopt regulations to establish a cannabis cultivation licensing program and track-and-trace system and require the Bureau to adopt regulations to establish a licensing program for commercial cannabis businesses, including distributors, retailers, testing labs, and microbusinesses. In particular, MAUCRSA establishes Business and Professions Code § 26012(a)(2), which states that CDFA "shall administer the provisions of this division related to and associated with the cultivation of cannabis. The Department of Food and Agriculture shall have the authority to create, issue, deny, and suspend or revoke cultivation licenses..." Similarly, Business and Professions Code § 26012(a)(1) states that the Bureau "shall have the sole authority to create, issue, deny, renew, discipline, suspend, or revoke licenses for microbusinesses, transportation, storage unrelated to manufacturing activities, distribution, testing, and sale of cannabis and cannabis products within the state."

No Natural Light Alternative

The No Natural Light Alternative would require that all cultivation be limited to the use of artificial light, and only indoor cultivation would be allowed. (PEIR, p. 5-4.) This would eliminate license types for outdoor and mixed-light cultivation, as both techniques rely upon natural light. As described in the CDFA PEIR Chapter 3, Proposed Program Activities, indoor cultivation is conducted within buildings without the use of any natural light. (PEIR, p. 3-13.) High-intensity lighting is typically used to stimulate photosynthetic activity and plant growth, and the duration of light and darkness is manipulated to simulate and accelerate the seasonal changes in daylight that trigger various growth stages of the plant. (PEIR, p. 5-4.) In some cases, the intensity of light is also changed throughout a particular photoperiod to simulate the changing intensity of sunlight throughout the day. (*Ibid.*) The No Natural Light Alternative would include a track-and-trace component similar to that described for CDFA's Proposed Program.

Finding:

Specific economic, legal, social, technological, or other considerations make infeasible the No Program Alternative identified in the EIR. (Pub. Resources Code § 21081(a)(3); Guidelines § 15091(a)(3).)

Explanation:

The No Natural Light Alternative would be inconsistent with MAUCRSA because it would foreclose the outdoor and mixed-light cultivation license types. Accordingly, the California State Legislature would need to amend MAUCRSA to allow implementation of this alternative.

No High-Intensity Grow Light Alternative

The No High-Intensity Grow Light Alternative would require that all cannabis cultivation operations use natural light and/or low-intensity artificial light (below a rate at which indoor cultivation would be viable). (PEIR, p. 5-4 to 5-5.) This would foreclose the ability to conduct indoor cultivation. (PEIR, p. 5-4.) In addition, outdoor and mixed-light licenses would not be allowed to use high-intensity grow lights for propagation. (*Ibid.*) The No High-Intensity Grow Light Alternative would include a track-and-trace component similar to that described for CDFA's Proposed Program. (*Ibid.*)

Finding:

Specific economic, legal, social, technological, or other considerations make infeasible the No Program Alternative identified in the EIR. (Pub. Resources Code § 21081(a)(3); Guidelines § 15091(a)(3).)

Explanation:

The No High-Intensity Grow Light Alternative would be inconsistent with MAUCRSA because it would foreclose the indoor cultivation license types. Accordingly, the California State Legislature would need to amend MAUCRSA to allow implementation of this alternative.

Restricted Size Alternative

The Restricted Size Alternative would limit the size of cultivation sites to "Specialty" or "Small Cultivator" sized operations, less than 10,000 square feet. (PEIR, p. 5-5.) This alternative was suggested during CDFA's Draft PEIR scoping process. (*Ibid.*) This would eliminate the issuance of medium cultivation licenses; for adult (nonmedical) use, would eliminate the issuance of licenses for large outdoor cultivation; and would add a size restriction to nursery licenses. (*Ibid.*) The Restricted Size Alternative would include a track-and-trace component similar to that described for CDFA's Proposed Program. (*Ibid.*)

Finding

Specific economic, legal, social, technological, or other considerations make infeasible the No Program Alternative identified in the EIR. (Pub. Resources Code § 21081(a)(3); Guidelines § 15091 (a)(3).)

Explanation

The Restricted Size Alternative would be inconsistent with MAUCRSA because it would foreclose the medium and large cultivation license types. Accordingly, the California State Legislature would need to amend MAUCRSA to allow implementation of this alternative.

CONSIDERATION OF PEIR

The Chief hereby finds and declares that she has reviewed and considered the PEIR certified by the CDFA in evaluating the Bureau's Microbusiness Cultivation Regulations, that the PEIR is an accurate and objective statement that fully complies with CEQA and the Guidelines, and that the PEIR reflects the independent judgment of the Bureau. The Chief further finds and declares that no new significant impacts as defined by Guidelines § 15088.5 have been identified after circulation of the Draft PEIR. On behalf of the Bureau, the Chief certifies that she has fully considered the environmental effects identified in the environmental impact report and has determined that the PEIR is adequate for the Bureau's use as a responsible agency.

ADOPTION OF FINDINGS OF FACT

The Chief adopts the findings of fact set forth above.

APPROVAL OF PROGRAM

The Chief finds that the approval and implementation of the Microbusiness Cultivation Regulations is necessary to fulfill the mandates and duties of the Bureau to implement its obligations under MAUCRSA and fulfill MAUCRSA's purpose and intent. Based on the entire record before the Bureau, including the above findings and all written and oral evidence presented to the Bureau, the Chief hereby approves the Microbusiness Cultivation Regulations.

DIRECTION TO STAFF

The Chief directs Bureau staff to prepare and file a Notice of Determination with the Office of Planning and Research as soon as practicable and no later than five (5) working days after the date of approval of the Microbusiness Cultivation Regulations as set forth immediately below.

ADOPTED this 14 day of November 2017.

Lori Ajax

Chief, Bureau of Cannabis Control